WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.55 of 2004

Commissioner of Income Tax
Chennai-IX. Appellant

versus

Mrs.C.Malathy Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 30.4.2003 in ITA No.1127/Mds/2002 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench. Against the Order of the Commissioner of Income Tax (Appeals)-X dated 08.03.2002 I.T.A.No.136/2001-02 against the assesment Order of 1996-97 dated 29/3/01 on the file of the Income Tax officer-IV(6) Chennai-6.

For appellant : Mr.K.Subramaniam
Standing Counsel for Income Tax
For respondent : Mr.V.Sundareswaran

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The appeal by the Revenue raises the following question of law viz:

" Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the time-limit prescribed for issue of a notice under Section 143(2) in respect of a return filed under Section 139 of the Income-tax Act or a return filed in pursuance to a notice under Section 142(1) of the Act will apply to a return filed in response to a notice under Section 148 of the Act? "

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2. The appeal relates to the Assessment Year 1996-97. It is seen that the assessee filed her return of income on 16th July 1998. It is seen that pursuant to the notice under Section 148, the assessee filed the return of income on 16th July 1998. The original assessment under Section 143(3) in respect of the assessee's husband was completed on 31.3.1999. It was noticed during the course of assessment proceedings that the applicant and her husband had jointly purchased a property on 26.10.1995; that they had paid Rs.6,00,000/- originally and the balance was to be paid at the time of registration. On verification of the books of accounts of the assessee, the Officer found that the source of funds for the purchase of the property was stated to be on loans received from the creditors. On enquiry, it was found that while some of the creditors could not be verified, the others were found to be not genuine. The Assessing Officer noted that in spite of several opportunities granted, the claim was not substantiated by the assessee.

3. On appeal by the assessee, in the course of the proceedings before the appellate authority, the Assessing officer was directed to file a report as regards the claim on loans taken with a direction that the assessee should prove the cash credits. On receipt of the remand report, the appellate authority found that there were no fresh facts submitted by the assessee to substantiate the claim of the assessee. The appellate authority also found that the assessee did not substantiate the genuineness of the entries. In the circumstances, the appeal was dismissed.

4. The assessee preferred a further appeal before the Tribunal. In the course of the proceedings before the Tribunal, new set of grounds were raised on the legality of the assessment proceedings. It was noted that the assessing officer issued a notice under Section 143(2) of the Act on 16.10.1999. The assessee contended that since the notice under Section 143(2) was issued beyond the period of twelve months from the end of the month in which the return was filed (date of filing of the return was on 16.7.1998 pursuant to the notice under Section 148), the assessment itself was bad in law as barred by limitation. The assessee contended that once the return was filed pursuant to the notice under Section 148, all the consequences or the procedure that has to be followed would be the one pursuant to the notice under Section 142(1), or a return filed under Section 139. Since the return should be treated to be one filed under Section 139, the Tribunal considered this plea and found that considering the scope of Section 143(2) and the fact that the Assessing Officer had issued the notice on 16th October 1999 beyond the time limit of twelve months which expired on 31st July, 1999, the assessment passed on 29th March 2001 was not a valid assessment. Referring to the decision of the Agra Bench of the Income Tax Appellate Tribunal relied on by the Revenue that the time limit specified under Section 143(2) proviso would not apply to a return filed in response to the notice under Section 148, the Tribunal held that the decision would not be applicable, since the provisions of Section 143(2) is clear enough to show that it nowhere stated that the procedure under Section 143 was limited to the returns filed under Section 139 only and not the proceedings framed in response to the initiation of the proceedings under Section 148. In the circumstances, it held against the Revenue.

https://hcservices.ecourts.gov.in/hcservices/

Aggrieved of this, the appeal is preferred by the Revenue on the question of law stated above.

5. A reading of Section 143(2) as it then stood at the relevant point of time shows that where a return has been made under Section 139 or in response to a notice under Section 142(1), no notice under the sub section shall be served after the expiry of twelve months from the end of the month in which the return is furnished. In the decision reported in 281 ITR 444 (COMMISSIONER OF INCOME TAX Vs. M.CHELLAPPAN), this Court held that where no notice was served within the stipulated period of twelve months, the proceedings under Section 143 came to an end and the matter attained finality. The decided case related to a case of an assessment under Section 147 of the Income Tax Act. This Court also referred to the decision of the Punjab & Haryana High Court reported in 255 ITR 220 (VIPAN KHANNA Vs. C.I.T.), wherein it was held that where notice under Section 143(2) had not been served on the assessee within the stipulated time and the return filed pursuant to the notice under Section 148, the matter had attained finality; therefore, the proceeding under Section 143 had come to an end.

6. A perusal of the provisions of Section 148 shows that before proceeding with an assessment or a re-assessment or a re-computation under Section 147, the Assessing Officer shall serve a notice on the assessee requiring him to furnish within such period as specified in the notice, a return of income in respect of which he is assessable under the Act. The provision also contemplated that a return filed pursuant to a notice shall be treated as if such a return were a return required to be furnished under Section 139. Learned standing counsel appearing for the appellant herein pointed out that by Finance Act, 2006, a proviso has been inserted to Section 148, as per which, where a return has been furnished during a period commencing on 1st of October 1991 and ending on 30th of September 2005 pursuant to a notice served under Section 148 and a notice under Section 143(2) has been served after the expiry of twelve months as specified under Section 143(2) as it stood before the amendment under the Finance Act, 2002, but before making the assessment, every such notice shall be deemed to be a valid notice; in the circumstances, the order of the Tribunal is unsustainable and liable to be set aside.

7. A perusal of the proviso to Section 148 inserted by Finance Act, 2006 with effect from 1.10.1991 reads as follows:

> "Section 148: Issue of notice where income has escaped assessment –
>
> (1) .....
>
> provided that in a case --
>
> (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
>
> (b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case --

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation. -- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October 2005 in response to a notice served under this section. "

8. A perusal of the retrospective amendment introduced in this proviso along with the explanation inserted shows that the requirement of notice under Section 143(2) within the time limit specified is mandatory in all cases in respect of returns furnished on or after 1.10.2005. However, with reference to returns filed from 1.10.1991 to 30.9.2005, the plea of limitation in respect of returns filed pursuant to the notice under Section 148 will not invalidate the assessment proceedings and that such notice would be deemed to be a valid notice. Considering the retrospective amendment, the order of the Tribunal has to be set aside.

9. The Tribunal had cancelled the assessment solely on the legal ground of limitation. In the light of the view that we have taken on the lines of the amendment introduced, we remit the matter back to the Tribunal to pass orders on merits of the claim of the assessee. The appeal is allowed with a remand back to the Income Tax Appellate Tribunal as stated above.

ksv

Sd/-
Asst.Registrar

/true copy/

https://hcservices.ecourts.gov.in/hcservices/

Sub Asst.Registrar

WEB COPY

To:

1. The Assistant Registrar
   Income Tax Appellate
   Tribunal IIIrd Floor,
   Rajaji Bhavan, Besant Nagar,
   Madras-90 (5 Copies)

2. The Secretary Board of Revenue
   New Delhi (3 Copies)

3. The Commissioner of Income Tax (Appeals)-X,
   121, Mahatma Gandhi Road,
   Chennai-34.

4. The Income Tax Officer,
   City Ward VI (6),
   Kannamal Buildings (7th Floor)
   No.611, Anna Salai, Chennai-600 006.

+1 cc to Mr.M.Quadirhosexen, Advocate Sr.No.313224

+1 cc to Mr.N.Muralikumaran, Advocate Sr.No.12002.

AKR(CO)
dcp/26.4.07 T.C. (Appeal) No.55 of 2004

https://hcservices.ecourts.gov.in/hcservices/